



City of Seattle Critical Areas Ordinance Update Recommendations

We appreciate the hard work on the Department of Planning and Development and support the significant improvements to the existing critical areas regulations. However, refinements are needed to protect the green spaces and water quality that make cities livable and to meet the high expectations of Seattle residents and property owners for the protection of these areas.

Fish and Wildlife Habitat Conservation Areas

- The habitats designated as Fish and Wildlife Conservation Areas in SMC 25.09.020(D) are excellent and we strongly support protecting them.
- Proposed SMC 25.09.200(D) provides that “the Director may condition development on parcels containing wildlife habitat to encourage preserving contiguous fish or wildlife habitat corridors.”
 - The Growth Management Act in RCW 36.70A.172(1) requires the protection of the functions and values of fish and wildlife habitats.
 - This language should be changed to provide that the Director shall condition development on parcels containing wildlife habitat or their buffers to protect the functions and values contiguous fish or wildlife habitat corridors.
 - The measures to protect fish and wildlife habitats should be based on the Department of Fish and Wildlife’s priority species and habitat recommendations with appropriate modifications for the specific sites.
 - We recommend the provisions from the CTED’s *Example Code Provisions for Designating and Protecting Critical Areas* included on the CAO on a CD.

Marine and Riparian Areas

- Seattle must adopt buffer provisions to protect its salt water shorelines with appropriate provisions for port facilities, marinas, docks, and maintaining views.
 - Salt water shorelines, including the marine riparian zone, are important habitats for fish and wildlife. See the following documents on the CAO on CD I am providing you today: Jim Brennan. “Riparian Functions and the Development of Management Actions in Marine Nearshore Ecosystems” p. 11 in Lemieux, J.P., Brennan, J.S., Farrell, M., Levings, C.D., and Myers, D. *Proceedings of the*

DFO/PSAT sponsored Marine Riparian Experts Workshop, Tsawwassen, BC, February 17-18, 2004. 2004. Can. Man. Rep. Fish. Aquat. Sci. No. 2680 and Gregory D. Williams and Ronald M. Thom. *White Paper: Marine and Estuarine Shoreline Modification Issues* p. 62 (Sequim, WA: Battelle Marine Sciences Laboratory, Pacific Northwest National Laboratory, April 17, 2001).

- For these and other reasons, the Growth Management Act requires the City of Seattle to adopt development regulations to protect the functions and values of saltwater shorelines.¹ In protecting these functions and values, best available science must be included in the record and must be considered substantively in the development of critical areas regulations.²
- RCW 36.70A.480(3)(b) provides that until the Department of Ecology approves a shorelines master program under the 2003 shoreline master program guidelines, critical areas within shoreline jurisdiction must be protected through a Growth Management Act critical areas regulation that complies with the Growth Management Act.³
- Seattle needs to adopt a buffer for type 1 waters. These include Seattle's important salmon rivers such as the Duwamish River. This is required to protect the rivers functions and values and water quality. It is also required by the Growth Management Act.
- The type 2 through 5 stream buffers in proposed SMC 25.09.200(A)3)(d)(1) are too narrow to provide adequate protection for salmon streams and the wildlife functions of riparian corridors. The important functions of these areas and the buffers needed to protect them are detailed in the Washington State Department of Fish and Wildlife's *Management Recommendations for Washington's Priority Habitats: Riparian* on the CAO on CD.
- We strongly support provisions and incentives to provide for better buffers during redevelopment.

Wetlands

- Proposed SMC 25.09.020(C) and SMC 25.09.160(B)(1)'s provisions exempting wetlands smaller than 100 square feet and category IV wetlands smaller than 1,000 square feet from protection should be eliminated.

¹ RCW 36.70A.172(1).

² *Whidbey Environmental Action Network (WEAN) v. Island County*, 122 Wn. App. 156, 171, 93 P.3d 885, 893 (2004) quoting *Honesty in Environmental Analysis & Legislation (HEAL) v. Central Puget Sound Growth Mgmt. Hearings Bd.*, 96 Wn. App. 522, 532, 979 P.2d 864 (1999).

³ RCW 36.70A.480(3)(b), RCW 36.70A.060, & RCW 36.70A.172(1). Also see Department of Ecology & Department of Community, Trade and Economic Development. *Questions and Answers on ESHB 1933 Critical Areas Protection Under the Growth Management Act and Shoreline Management Act* p. 4. This document can be downloaded at: Ecology's Web site at: http://www.ecy.wa.gov/programs/sea/sma/laws_rules/90-58/1933_Guidance.pdf It is also included on the CAO on CD included with these remarks in the Wetlands directory.

- Small wetlands are important and allowing them to be filled without mitigation will result in a net loss of wetland functions and values. The value of small wetlands is documented by Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, S. Stanley, E. Stockdale. August 2003 Draft. *Freshwater Wetlands in Washington State Volume 1: A Synthesis of the Science*, pp. 5-12 (Washington State Department of Ecology Publication # 03-06-016). This is included in the Wetlands Directory of the data CD I am providing you today.
- These exemptions are also contrary to the Central Puget Sound Growth Management Hearings Board's holding in *Pilchuck v. Snohomish County* which requires that all critical areas be designated and that all designated critical areas be protected. *Pilchuck v. Snohomish County (Pilchuck II)*, CPSGMHB Case No.: 95-3-0047c Final Decision and Order p. *21, 1995 WL 903206, p. *21 (December 6, 1995).
- Proposed SMC 25.09.160(B)(1) & (E)'s wetland buffers of 100 to 50 feet are inadequate to protect wetland functions and values. The averaging provisions can reduce them further. We recommend that you adopt buffers similar to the Washington State Department of Ecology's Alternative 3 buffers. This alternative is described in Appendix 8-C the Washington State Department of Ecology's August 2004 *Draft Wetlands in Washington State Volume 2: Managing and Protecting Wetlands* (Washington State Department of Ecology Publication # 04-06-024) included in the wetland directory of the data CD I am giving you today.
- SMC 25.09.160(A)'s criteria for when wetlands can be impacted are inadequate to protect wetlands, especially Seattle's very limited but very important tidal and riparian wetlands. The criteria from the State of Washington Department of Community Trade and Economic Development's (CTED's) *Example Code Provisions for Designating and Protecting Critical Areas* should be adopted. Please see pages pp. A – 40 – A – 41 (November 2003). A copy of this document is included in the CAO on a CD.
- We appreciate and strongly support the approved mitigation ratios and provisions in proposed SMC 25.09.160. These improvements will help protect the functions and values of critical areas.

All Critical Areas

Proposed SMC 25.09.240(E) should be amended to allow critical areas to be included in residential density calculations. This will reduce property owner concerns about critical area buffers and provide for appropriate residential densities in the city. SMC 25.09.260 allows recovery of residential density through an administrative conditional use permit process, but this added process is in our opinion unnecessary.